

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

NELDA NUNCIO,
Plaintiff

v.

WEBB COUNTY et al.,
Defendants.

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CIVIL ACTION NO. 5:20-CV-92

DEFENDANTS' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF THIS COURT:

Defendants Jose Aguilera, Adrian Castillo, Roel Chavarria, Claudia Cordova, Correctional Office Esquinka, Correctional Officer Valdez, Correctional Officer Villarreal, Miguel Garcia, Gabriel Gonzalez, Luis Lozano, Jaime Magana, Joseph Medina, Luis Manuel Ramos, MC Resendez, Guadalupe Rivera, Jorge Sandoval, Ponce Trevino, Alejandro Valdez, Jessica Valdez, Andres Zamarripa, and Webb County, Texas (hereinafter "Defendants") file this Answer to Plaintiff's First Amended Complaint and would respectfully show the Court the following:

I. GENERAL DENIAL

1. In conformity with Rule 8(b) of the Federal Rules of Civil Procedure, Defendants generally deny the allegations contained in Plaintiff's First Amended Complaint, Docket Entry No. 24.
2. In regard to Section I, Defendants deny all allegations contained in Paragraph Nos. 1, 2 and 3.
3. In response to Section, III, Paragraph Nos. 4 and 5, Defendants admit that 42 U.S.C. §1983 provides a jurisdictional basis. Defendants assert that venue is appropriate in the Southern District, Laredo Division, as such is the district where the claim arose in accordance with 29 U.S.C. §1391(b). However, Defendants specifically deny that Webb County has the capacity to be sued in this case.

4. In regard to Paragraph No. 6 regarding Sheriff Martin Cuellar, Defendants specifically deny the allegations asserted and deny that Plaintiff is entitled to any of the relief sought in this case. Further, these claims are moot because Sheriff Cuellar was dismissed from this suit on September 28, 2021. *See* Docket Entry 36.
5. In response to jurisdictional allegations against the Individual Jailer Defendants in Paragraphs Nos. 7 to 10, Defendants admits that 42 U.S.C. §1983 provides a jurisdictional basis. Defendants specifically deny the allegations asserted and deny that Plaintiff is entitled to any of the relief sought in this case.
6. With regard to any allegations contained in Paragraph No. 11, Defendants specifically deny the allegations asserted and deny that Plaintiff is entitled to any of the relief sought in this case; however, Defendants admit Albert Barrientos, deceased, was booked into the Webb County Jail on June 26, 2018. Further, Defendant admits that the autopsy reflects that Barrientos died of Sepsis.
7. With regard to all allegations contained in Section IV, Paragraph Nos. 12 through 27, Defendants specifically deny the allegations asserted and deny that Plaintiff is entitled to any of the relief sought in this case. Further, all paragraphs relating to the policies, training, and custom of Webb County are moot because all 42 U.S.C. §1983 against Webb County were dismissed on September 28, 2021. *See* Docket Entry 36.
8. With regard to any allegations contained in Section V, Paragraph Nos. 28 through 34, Defendants specifically deny the allegations asserted and deny that Plaintiff is entitled to any of the relief sought in this case.
9. With regard to all allegations contained in Section VI, Paragraph Nos. 35 through 37, Defendants specifically deny the allegations asserted and deny that Plaintiff is entitled to any

of the relief sought in this case. Further, all paragraphs relating to the policies, training, custom Sheriff Cuellar are moot because all 42 U.S.C. §1983 against Sheriff Cuellar were dismissed on September 28, 2021. *See* Docket Entry 36.

10. With regard to all allegations contained in Section VII, Paragraph Nos. 38 through 43, Defendants specifically deny the allegations asserted and deny that Plaintiff is entitled to any of the relief sought in this case. Further, all paragraphs relating to the policies, training, custom Webb County are moot because all 42 U.S.C. §1983 against Webb County and Sheriff Cuellar were dismissed on September 28, 2021. *See* Docket Entry 36.
11. With regard to all allegations contained in Section VIII, Paragraph Nos. 44 through 50, Defendant Webb County specifically denies the allegations asserted and denies that Plaintiff is entitled to any of the relief sought in this case. Further, all paragraphs relating to survival claims under the Texas Wrongful Death statute are now moot because they were dismissed on September 28, 2021. *See* Docket Entry 36.
12. With regard to all allegations contained in Paragraph Nos. 51 through 59 (unnumbered section titled “Fifth Cause of Action, Survival Claims”, page 18), Defendant Webb County specifically denies the allegations asserted and denies that Plaintiff is entitled to any of the relief sought in this case. Further, all paragraphs relating to survival claims under the Texas Tort Claims act regarding Individual Jailer Defendants are now moot because they were dismissed on September 28, 2021. *See* Docket Entry 36.
13. With regard to any allegations contained in Section X, Paragraph Nos. 60 through 61, Defendants specifically deny the allegations asserted and deny that Plaintiff is entitled to any of the relief sought in this case.

14. With regard to any allegations contained in Section XI, Paragraph No. 62, Defendants specifically deny the allegations asserted and deny that Plaintiff is entitled to any of the relief sought in this case.
15. With regard to any allegations contained in Section XII, Paragraph No. 63, Defendants specifically deny the allegations asserted and deny that Plaintiff is entitled to any of the relief sought in this case.
16. With regard to any allegations contained in Section XII, Paragraph No. 64, Defendants specifically deny the allegations asserted and deny that Plaintiff is entitled to any of the relief sought in this case.
17. The remaining paragraphs do not elicit a response.

II. AFFIRMATIVE DEFENSES

18. Individual Defendants assert that they were engaged in the exercise of discretionary duties at all times relevant to this litigation, and were acting within the course and scope of their duties as jailers in Webb County, Texas, with objectively reasonable expectation that their conduct, if any, was reasonable, lawful and necessary in light of all attendant circumstances. As such, Defendants are entitled to assert the defense of qualified immunity.
19. Defendants assert all privileges and immunities available under federal or state law regarding the limitation of damages, if any, including all limitation applicable under the Texas Tort Claims Act.
20. Defendants assert that Plaintiff's damages, if any, must be reduced by all applicable statutory caps, including but not limited to all relevant limitations upon damages contained in the Texas Tort Claims Act.

21. Defendant Webb County asserts its entitlement to sovereign immunity as to all state law claims, if any, by Plaintiffs because they do not fall within the narrow waiver of immunity created by the Texas Tort Claims Act and denies liability to exemplary or punitive damages arising under Federal law.

III. ATTORNEY'S FEES AND COSTS

22. This case is frivolous and wholly without merit. Defendants are entitled to an award of attorney's fees and costs.

IV. JURY DEMAND

23. Defendants hereby respectfully request a trial by jury.

V. PRAYER

For these reasons, Defendants request that the Court enter judgment that Plaintiff take nothing, assess costs against Plaintiff, and award Defendants all other relief to which they are entitled.

Respectfully submitted,

/s/ J. Eric Magee

J. Eric Magee

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of October, 2021, I served the foregoing Defendants' Original Answer to the following via facsimile, electronically and/or certified mail, return receipt requested:

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/s/ J. Eric Magee

J. Eric Magee